

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7800 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANJULABEN D.PATEL

Versus

INDIAN OIL CORPORATION

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Appearance:

MR PB MAJMUDAR for Petitioner  
MR MANISH R BHATT for Respondent No. 1  
MR KS NANAVATI for Respondent No. 2

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 23/03/99

ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to consider the case of the petitioner for giving her appointment on compassionate ground and allow her to retain the quarter till her case for appointment on compassionate ground is decided by the respondents.

2. Dhulabhai Patel, late husband of the petitioner was serving in the respondent refinery as Ambulance driver and he was a confirmed employee, who died on 11.5.88 of a sudden heart attack. The petitioner has two minor sons and four minor daughters. She moved an application to the respondents in November, 1988 for her appointment on compassionate ground. The petitioner again wrote a letter to the Executive Director of the respondent Refinery on 3.1.89 stating therein that she is physically handicapped and she has to maintain four daughters and two sons, all of them are minor and she requested for a suitable job, but that application of the petitioner was not considered. The petitioner is occupying a quarter of the respondent refinery. That was subject to the eviction proceedings by the respondents and she also received a notice for vacating the quarter.

3. The respondent has filed an affidavit stating therein that for the benefit of employees, superannuation benefits fund scheme came into force from 26th December, 1988 and that scheme is for the rehabilitation of the families of the workmen dying in service as also for the workmen in the post retirement period. The petitioner's husband was working as a driver and posted in the hospital. He died due to a second heart attack on 11.5.88. Several letters were written to the petitioner to attend the office of the respondent to complete the formalities for paying retirement benefits. The petitioner has opted for option no. 1 i.e. 40% of last salary drawn (basic + D.A.) guaranteed for 15 years or life time whichever is longer. As per the scheme, a Master policy is taken with the Life Insurance Corporation of India and suitable annuity is purchased from LIC to secure the benefit under the SABF scheme. A cheque for an amount of Rs.36,000/- was sent to the petitioner which was refused by her. As the petitioner has already obtained option no. 1 of the scheme, the petitioner's request for appointment on compassionate ground is not tenable and is required to be rejected. It is also stated that after the introduction of SABF scheme, the existing scheme of offering employment to spouse of workman has ceased to operate. Hence, the petitioner is not entitled to get the employment in the respondent organisation. The petitioner is getting Rs. 300/- per month from Indian Oil Employees Welfare Co-operative Society, Bombay. The petitioner has not attended the respondent office even for collecting provident fund dues etc. She also refused to accept the cheque issued by LIC. Only when the eviction proceedings were started against the petitioner, she has filed this petition and it appears that she was

interested only in retaining the quarter which is unauthorisedly occupied by her after the death of her husband. There is no policy of the respondents to give employment to the spouse of the deceased employee. As per the new scheme, if the dependent opts for option no. 3, son or daughter will be entitled to be considered for employment, if found otherwise, eligible and suitable.

4. In her re-joinder affidavit, the petitioner has stated that it is true that she has received some letters from the respondent, but she was unable to understand as to what she was required to do. As she is in great difficulty in looking after her children. There is no question for her to opt for option no. 1 of the scheme which does not provide for employment, but only for some cash benefits. She is an illiterate lady. The respondent authorities got the papers thumb marked without explaining the contents thereof to her and she requested this Court to direct the respondents to give her benefit of option no. 3 so that at least one of her daughters who has become major can be given employment and her entire family can be saved from starvation. It is also stated that she had refused to accept the cheque for an amount of Rs.36,000/- as she had never opted for option no. 1. She understands that in case she would accept the amount of Rs. 36,000/-, then she or her daughters would not be able to get any employment in the respondent Corporation.

5. Heard the learned counsel for the parties at length and perused the relevant papers. The learned counsel for the petitioner submitted that the petitioner's husband died on 11.5.88. At that time, he was working as Ambulance driver in the respondent Corporation. SABF scheme provides for compassionate employment under option no. 3 wherein the employment can be offered within three years. She has applied for appointment on compassionate ground but, her prayer was rejected on the ground that there is no provision to provide employment to spouse. Moreover she is handicapped. This policy is against general policy adopted in other departments and in case any employee dies in harness, the spouse is the only person entitled for appointment on compassionate ground.

6. On the contrary, the learned counsel for the respondent Corporation contended that the policy has been made for the benefit of the employees. The application for appointment should have been made within a period of six months and the employment can be offered to a son or a daughter within three years of the death of

the employees. In the present case, there is no policy of the department that after the death of any employee, the spouse could be appointed on compassionate ground. The only policy is to provide an appointment to a son or a daughter of the deceased employee. In the present case, the petitioner being the spouse of the deceased is not entitled to appointment under the policy and hence her application is liable to be rejected.

7. So far as the appointment of her daughter on compassionate ground is concerned, the petitioner had never requested any authority for the appointment of her daughter on compassionate ground before. For the first time, she has made this request before this Court in this petition, even though she had no major daughter at the time of death of her husband i.e. on 11.5.88. The first daughter became major in the year 1992 and her second daughter became major in July, 1993. According to the policy, the application ought to have been made within six months for the employment and that employment can be offered on compassionate ground to the suitable and eligible son or daughter of the deceased within three years. On the death of the petitioner's husband and within three years, after the death, no dependent son or daughter was major. Hence, no appointment can be given to the petitioner after a period of three years of the death of the deceased employee.

8. The learned counsel for the respondents relied on several decisions of the Supreme Court on the point that compassionate appointment cannot be offered as the matter in issue. After a long period, after the death of the deceased employee, compassionate appointment cannot be given to any person. The main object is to enable the family to tide over sudden financial crises and is not to provide employment after a long delay in applying for compassionate appointment does not entitle to any relief.

9. I have gone through the averments made on behalf of the parties and considered the submissions made on behalf of the parties. The petitioner's husband died on 11.5.88. Though she applied for her own appointment on compassionate ground, the policy of the respondent Corporation does not provide any compassionate appointment to the spouse of the deceased. As such, she was not entitled for appointment. At the relevant time, either on 11.5.88 or within three years, no daughter or son of the petitioner was major and eligible for appointment. Hence, under the policy, such appointment is not available to the petitioner. Even according to

the learned counsel for the petitioner, one daughter became major in the year in the year 1992 and the second daughter became major in July, 1993. Within a period of three years in which employment can be offered, no daughter or son was eligible for the post. Hence, she is not entitled for any compassionate appointment of her daughter. Secondly, no employee has any vested right for the compassionate appointment. The very object of the compassionate appointment is to give immediate relief to the family and is not to provide employment. Compassionate employment is an exception to the general rule and compassionate employment is intended to provide immediate relief to the family on the sudden death of an earning member. It is not a vested right which can be exercised at any time in future. It cannot be claimed and offered after a lapse of time and crisis is over. In the case of Hariyana State Electricity Board vs. Naresh Tanwar and another reported in 1996 (2) (JT), SC, 542, confirming the view taken in the case of Umesh Kumar Nagpal vs. State of Haryana and others JT (1994) (3) SC,525 wherein it is held by the Supreme Court that compassionate appointment cannot be granted after a lapse of reasonable period and mere purpose of compassionate appointment which is an exception to the general rule of open recruitment, is intended to meet financial problem being suffered by the members of the family of the deceased employee. It is also observed therein that the very object of the appointment of a dependent of the deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

The Apex Court has also taken the similar view in the case of Managing Director,MMTC Ltd., New Delhi and another vs. Pramoda Dei alias Nayak reported in (1997) 11 Supreme Court cases, 390 wherein it has been held that object of compassionate appointment is to enable the penurious family to tide over the sudden financial crisis and is not to provide employment. Mere death of the employee does not entitle his family to claim compassionate appointment. In the case of State of Haryana vs. Naresh Kumar Bali reported in (1994) SCC, 448 it has been held that High Court can only direct consideration of the writ petitioner's claim to compassionate appointment in accordance with the rules. It cannot itself direct the appointment more so when the post in question was exclusively a promotional one. Exercise of power by Supreme Court under Article 142(1) can be of no guidance on the scope of Article 226. The Apex Court in the case of S.Mohan vs. Government of

Tamilnadu and another reported in (1998) 9 SCC, 485 has held that the question however, is whether in the facts and circumstances set out, could the appointment of the appellant have been made on compassionate grounds after a lapse of 10 years from the date of the death of his mother. Secondly, whether the circumstances justify the appointment of the appellant on compassionate grounds. Compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the Rules. The consideration for such employment is not a vested right which can be exercised at anytime in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. In the case of State of U.P. and others vs. Parasnath reported in (1998) 2 SCC, 412, the Apex Court has held that for the first time the son making the application for compassionate appointment seventeen years after the said employee's death does not entitle him to any relief. In the case of Jagdish Prasad vs. State of Bihar and another reported in (1996) 1 Supreme Court cases, 301, the Apex Court has held that claim for compassionate appointment cannot be made long after the employee's death. Similarly in the case of Haryana State Electricity Board and another vs. Hakim Singh reported in (1997) 8 SCC, 85, the Apex Court has held that the request for compassionate appointment made after a long time of 14 years when the son of the employee attained majority was liable to be rejected. In the case of A.P.S.R.T.C. and others vs. Kaiser Begum reported in (1998) 9 SCC, 398 the Apex Court has held that the Court could not, give such directions which are contrary to the existing scheme of providing appointment on compassionate ground. The rights of the respondents are governed by the scheme which the employer may provide for appointment on compassionate ground. In the case of Himachal Road Transport Corporation vs. Dinesh Kumar reported in (1996) 4 Supreme Court Cases, 560, the Apex Court has held that in absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons, when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the

availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post. In the case of Life Insurance Corporation of India vs. Mrs. Asha Ramchandra Ambedkar and another reported in AIR 1994 SCC, 2148, the Apex Court has held that whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the 2nd respondent. To straightway direct the appointment would only put the appellant corporation in piquant situation. In the case of State of Himachal Pradesh and another vs. Jaflidevi (Smt.) reported in (1997) SCC, 301, the Apex Court has held that the policy laid down by the Government regarding compassionate appointment should not be departed from by the High Court merely on account of sympathetic consideration and hardship of the person concerned.

10. In the present case, by an order dated 21st September, 1998 had directed the respondents to consider and decide the representation moved by the petitioner for appointment of her daughter Dimple on compassionate ground in the respondent refinery within a period of four weeks from the date of production of a certified copy of the aforesaid representation. The learned counsel for the petitioner has informed that the representation of the petitioner was considered and rejected by the department concerned. In the present case, the respondent Corporation has already framed a policy for the benefit of the family of the deceased employees. The petitioner might have signed the papers under some misunderstanding for opting for option no.1. However, the fact remains that at the relevant time, according to the policy, spouse of the deceased employee was not permitted to be appointed on compassionate ground and within three years from the date of the death of the deceased employee, there was no major son or daughter of the deceased employee available for compassionate appointment. In view of the principles laid down by the Supreme Court as discussed above and the policy laid down by the respondent Corporation, the petitioner is not entitled for the relief of compassionate appointment either for herself or for her daughters. This petition is therefore, liable to be dismissed. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

10. So far as retention of the quarter by the

petitioner is concerned, the petitioner is directed to vacate the quarter within three month from the date of this judgment as she has retained the quarter in question under the orders of this Court.

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